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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,415	02/26/2002	Michael J. Puglia	MSE #2645	8582

7590

02/08/2005

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EXAMINER

SIEPKE, SAMUEL P

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/082,415

Applicant(s)

PUGIA ET AL.

Examiner

Samuel P Siefke

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-13,16-18 and 38-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-13,16-18 and 38-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/15/04 10/21/04 88
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **1,5-13,16-18** and **38-50** are rejected under 35 U.S.C. 102(b) as being anticipated by Kellogg et al. (USPN 6,063,589).

Kellogg discloses a device for performing microanalytic analyses that comprises a platform that rotates, thereby utilizing centripetal forces that motivates fluid movement through microchannels embedded in the microplatform. The microplatform comprises sample wells for receiving a sample liquid (col. 10, lines 38-42), capillary passageways communicating with the sample well (col. 10, lines 42-48), passageway including a segment defining the volume of uniform liquid sample being disposed between two intersecting passageways vented to the atmosphere (col. 6, lines 7-14), the segment communicating with a transfer capillary passageway for from a first sample well to a first reagent well (col. 13, lines 32-38), a capillary stop disposed within the transfer passageway for preventing transfer of uniform sample to the first reagent well (col. 11, lines 7-13). Kellogg discloses the capillary passageways have walls that are hydrophilic relative to the sample liquid (col. 10, line 64- col. 11, line 8). The capillary stops can either be hydrophilic (col. 10, lines 64- col. 11, line 8) or hydrophobic (col. 11, line 7-13).

A second and third (multiple) reagent well in liquid communication through a capillary passageway with the first reagent well is disclosed (col. 13, lines 32-38; col. 17, lines 5-20). The first reagent well contains a reagent adapted to react with a component contained in the sample and produce a response indicating the amount of component in the liquid sample (col. 14, lines 5-34) along with reducing the interference of the component with a second component to be detected (col. 17, lines 5-20). The first reagent well contains a reagent to pretreat the liquid sample (col. 17, lines 5-20). Electrodes are disposed in the reagent wells for measuring properties of the liquid sample (col. 53, line 66- col. 54 line 29). The capillary channel has a width of about 10 – 500  $\mu\text{m}$  (col. 9, lines 35-41). The capillary passageway has a depth of at least 5  $\mu\text{m}$  (col. 9, lines 30-45).

### ***Response to Arguments***

Applicant's arguments filed 10/15/04 have been fully considered but they are not persuasive. Applicant argues, "Applicant's system uses only capillary action to fill the segment that defines the amount of the liquid sample. Kellogg's system requires rotating at about 175 rpm to fill the metering capillaries and to empty the inlet well 201 into the overflow channel." Kellogg discloses the use of capillary channels throughout the specification, and a capillary channel uses capillary action to move a fluid through the channel. Kellogg only uses the centrifugal forces to overcome the capillary stop. Therefore all the limitations of the current application are anticipated. Regarding the

use of hydrophilic capillary passageway and hydrophilic capillary stop, see col. 10, line 64- col. 11, line 8.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

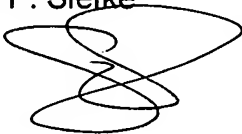
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 571-272-1262. The examiner can normally be reached on M-F 7:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sam P. Siefke



January 6, 2005



Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700